

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DAVID WALKER CHESNEY,

Defendant-Appellee.

UNPUBLISHED

August 28, 2001

No. 228684

Saginaw Circuit Court

LC No. 99-017519-FH

Before: K.F. Kelly, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendant's motion to quash the information and dismissing the case. We reverse and remand.

I. Basic Facts and Procedural History

Defendant was charged in a six-count complaint on June 4, 1999.¹ Defendant waived the preliminary examination and was bound over to circuit court. When defendant appeared in circuit court, and in response to a discovery request, he obtained a copy of the complaint and warrant. On July 26, 1999, defense counsel filed a waiver of arraignment in circuit court. The waiver specifically acknowledges defendant's receipt of the information.

In ruling on an unrelated motion, the circuit court noted that an information was not filed with the court. Consequently, the trial court requested the parties to address MCR 6.112(C), which obligates the prosecution to file the information on or before the scheduled arraignment. On March 30, 2000, the prosecution filed an information and included its notice of intent to seek

¹ Specifically, defendant was charged with possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), manufacture of marijuana, MCL 333.7401(2)(d)(iii), conspiracy to commit the foregoing, MCL 750.157a, maintaining a drug house, MCL 333.7405(1)(d) and MCL 333.7406, conducting a criminal enterprise, MCL 750.159i(1), and first-degree money laundering, MCL 750.411k(1) and MCL 750.411o.

an enhanced sentence in accord with MCL 769.13 since defendant was a fourth habitual offender.² Defendant moved to quash and the trial court granted the motion stating:

MCR 6.112(C) states unequivocally that the prosecutor **must** [sic] file the information before the arraignment. The prosecutor's failure to file the information before or on the date of the scheduled arraignment is not a harmless error. It is a procedure that must be complied with to provide the Defendant with sufficient factual information on the charges against him so that he can adequately defend himself against those charges. *The prosecutor's error is potentially prejudicial against the Defendant.* The exceptions to the mandate cannot excuse the prosecutor's failure to comply with the [sic] MCR 6.112(C) for 10 months. (Emphasis added.)

Plaintiff appeals as of right. We reverse and remand.

II. The Information

MCR 6.112 governs the filing of the information. Interpretation of a court rule presents a question of law that we review de novo. *Waatti & Sons Electric Co v Dehko*, 230 Mich App 582, 586; 584 NW2d 372 (1998).

At the time this case was pending, MCR 6.112 provided in relevant part:

* * *

(C) The prosecutor must file the information on or before the date set for the arraignment. A supplemental information charging the defendant with being an habitual offender may not be filed more than 14 days after the defendant is arraigned or has waived arraignment on the information charging the underlying felony, or after trial has begun if the defendant is tried within the 14-day period.

* * *

(F) Absent a timely objection and a showing of prejudice, a court may not dismiss an information or reverse a conviction because of an untimely filing (except an habitual offender information) or because of an incorrectly cited statute or a variance between the information and proof regarding time, place, the manner

² The prosecution concedes that the habitual offender enhancement was not timely and was subject to dismissal under MCL 769.13. In light of this concession, the issue whether the habitual offender enhancement was properly dismissed is not at issue in this appeal and will not be addressed.

in which the offense was committed, or other factual detail relating to the alleged offense.³

The information duly notifies a defendant of the charges instituted against him and further eradicates double jeopardy issues in the event of a retrial. *People v Traugher*, 432 Mich 208, 215; 439 NW2d 231 (1989). The dispositive question in determining whether a defendant was prejudiced by a defect in the information is whether the defendant knew the acts for which he was being tried so that he could adequately put forth a defense. *Id.* Given that there is no dispute concerning whether the prosecution violated MCR 6.112(C), the issue is whether the harmless error provision of MCR 6.112(F)⁴ precludes dismissal.

MCR 6.112(F) places the burden on defendant to demonstrate prejudice and thus establish that the error was not harmless. In the case *sub judice*, defendant contends that he did not know the identity of the witnesses who would be called to testify against him, thus precluding discovery. Yet he failed to submit any evidence (such as an affidavit) that he had not received a copy of the complaint and warrant listing the witnesses. Although the prosecution's proof that it provided a copy of the complaint and warrant could have been contested, defendant never challenged it. Because MCR 6.112(F) precludes dismissal "[a]bsent . . . a showing of prejudice . . .," and defendant has not made that initial showing, the trial court erred in quashing the information and dismissing the case.

³ The rule was amended October 3, 2000. The rule, as amended, states:

(C) Time of Filing. The prosecutor must file the information on or before the date set for the arraignment.

(F) A notice of intent to seek an enhanced sentence pursuant to MCL 769.13; MSA 28.1085 must list the prior convictions that may be relied upon for the purposes of sentence enhancement. The notice must be filed within 21 days after the defendant is arraigned or has waived arraignment on the information charging the underlying felony, or before the trial begins, if the defendant is tried within the 21-day period.

(G) Harmless Error. Absent a timely objection and a showing of prejudice, a court may not dismiss an information or reverse a conviction because of an untimely filing or because of an incorrectly cited statute or a variance between the information and proof regarding time, place, the manner in which the offense was committed, or other factual detail relating to the alleged offense. This provision does not apply to the untimely filing of a notice of intent to seek an enhanced sentence.

⁴ Now MCR 6.112(G).

Finally, we note that although there was a ten-month delay in filing the information, defendant did not file a motion until after the court raised the issue. There is no indication that defendant was not aware of the charges upon which he would stand trial. When the trial court granted defendant's motion to quash without a showing of prejudice, it effectively transformed a violation of a court rule into prejudice per se. This is also error requiring reversal.

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Michael J. Talbot